

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 5531 of 2024
Date of decision : 20.08.2025

Manjubala Bansal
R/o: -K-2.1/24, Ground Floor, Vatika India
Next, Sector-83, Gurugram, Haryana.

Complainant**Versus**

M/s Elan Buildcon Pvt. Ltd.
Office at: 3rd floor, Golf View Corporate Tower,
Golf Course Road, Sector-42, Gurugram,
Haryana.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Gaurav Bhardwaj (Advocate)
Ishaan Dang (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the



Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name of the project	ELAN Miracle, Sector 84 , Gurugram
2.	Nature of the project	Commercial
3.	Area of the project	5.91875 acres
4.	Hrera registered	Registered Regd. No. 190 of 2017 Dated 14.09.2017
5.	DTCP license	34 of 2014 Dated 12.06.2014
6.	Allotment letter	21.11.2017 (As on page no. 19 of complaint)
7.	Unit no.	G-142, Retail/Commercial Block, Ground floor (As on page no. 19 of complaint)
8.	Unit admeasuring	541 sq.ft. [Earlier] 552 sq.ft. [Now] (As on page no. 63 of complaint)
9.	Agreement for sale	14.05.2019 (As on page no. 37 of reply)
10.	Possession clause	CLAUSE 7

		POSSESSION OF THE PREMISES/UNIT: 7.1 Schedule for Possession of the said Premises/Unit- <p>The Promoter assures to hand over possession of the said premises/unit along with ready and complete common areas with all specification, amenities and facilities of the project in place within a period of 48(forty eight) months from the date of this Agreement with an extension of further twelve months, unless there is delay or failure due to war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.</p> <p>[Emphasis supplied] (As on page no. 37 of complaint)</p>
11.	Due date of possession	14.05.2024 [Calculated 48 months from the date of agreement plus 12 months grace period]
12.	Payment plan	Special Down Payment Plan <ol style="list-style-type: none"> 1. On application of booking-10% of Basic Sale Price 2. Within 30 Days of Booking-10% of Basic Sale Price 3. Within 12 months of booking-15% of Basic Sale Price 4. Within 18 months of booking-100% of EDC/IDC 5. On offer of Possession-65% of Basic Sale Price + 100% of IFMS + 100% of Car Parking-Usage Rights + (*Stamp duty, Registration charges & Administrative charges & all other charges as applicable will be charged extra)
13.	Total sale consideration	Rs.67,94,960/- (As per customer ledger on page no. 63 of



		complaint)
14.	Total amount paid by the complainant	Rs. 77,94,912/- (As per customer ledger on page no. 64 of complaint)
15.	Letter of assurance	14.06.2018 (As on page no. 28 of reply)
16.	Assured return	Clause 1 <i>.....A fixed amount of Rs.29,079/- per month, till issuance of offer of possession.</i>
17.	Occupation certificate	15.03.2023 (As on page no. 124 of complaint)
18.	Offer of possession for fit outs	07.09.2021 (As on page no. 65 of complaint)
19.	Intimation about grant of OC	22.03.2023 (As on page no. 87 of complaint)_
20.	Conveyance deed	Not executed

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
- I. That somewhere around 2017, the respondent advertised about the launch of its new commercial project namely "Elan Miracle" located in Village Hayatpur, Sector-84, Gurugram, Haryana. The complainant was planning to have her own retail store in future and booked a commercial unit in the said project by paying an amount of Rs.4,50,000/- towards the said unit. Accordingly, an Allotment Letter dated 21.10.2017 was issued by the respondent in favour of the complainant.

- II. Subsequently, in accordance with the demands raised by the respondent under the "Fixed Return Payment plan", the complainant made further payments followed by the execution of a Builder Buyer Agreement on 14.05.2019(after almost 2 years from booking) for the commercial unit bearing no. G-142, located on Ground Floor, admeasuring covered area of 271 sq. ft. and a super area of 541 sq. ft.
- III. As per Clause 7.1 of the Builder Buyer Agreement dated 14.05.2019, the respondent undertook to handover possession within 48 months from the date of execution of agreement, i.e. by 14.05.2023. However, the respondent has miserably failed to hand over possession till date.
- IV. Thereafter, the complainant kept making payments in accordance with the demands raised by the respondent. Till 2019, the erstwhile owner had paid more than 90% of the total sale consideration of Rs.67,94,960/-. As per the agreed payment plan, the respondent undertook to pay a fixed assured return every month as against the hefty payment amount sought from the complainant.
- V. After almost 4 years from the date of booking, the complainant received an "Offer of possession for fit-outs" dated 07.09.2021 whereby the respondent informed regarding initiation of Occupation Certificate process while also raising final payment demand of Rs.5,71,479/- and briefly mentioning about increase in super area from 541 to 547 sq. ft. It is to be noted that the final payment installment was due only upon legal offer of possession while the respondent with a *mala fide* intention, raised said demand upon offer for fit-outs which is not a legal possession offer in the eyes of law.

- VI. That in order to avoid any delay payment charges, the complainant immediately made the payment of Rs.4,89,429/- and Rs.1,86,885/- on 20.09.2021 in the hope of getting possession of the unit. Thereafter, vide e-mail dated 23.08.2022, the respondent invited the complainant via a "Letter of Intent(LOI)" to enter into a leasing agreement with 'Pantaloons' in order to enable its opening in complainant's unit. However, the pricing and other terms and conditions offered by the respondent were not acceptable to the complainant and accordingly, vide e-mail dated 24.08.2022, the complainant refused to have 'pantaloons' on board and sought a better proposal and better pricing in accordance with market standards.
- VII. That later, vide letter titled as '*Intimation regarding grant of Occupation Certificate*', the respondent informed about grant of Occupation Certificate on 15.03.2023 and to the complainant's utter shock, asked her to clear the dues. It is to be noted that except the stamp duty charges, the complainant had cleared all the dues in 2021 itself. Infact, the respondent had illegally sought and taken the last installment due 'on offer of possession' in 2021 itself in the garb of 'offer for fit-outs'. To this, the complainant visited the respondent's office in order to check her accounts and to seek an explanation of the payment demands and to seek a tentative date of handover, but the respondent sought some time to share statement of account and to inform about final handover.
- VIII. That the respondent had vaguely mentioned in the Intimation letter that the area had increased to 552 sq. ft. while carpet area reduced to 256.59 sq. ft. In this regard, it is to be noted that in accordance with the Real Estate (Regulation and Development) Act, 2016, unit

can be charged only upon carpet area basis and not upon super area and in the present case, decrease in carpet area would invite a reduction in total cost rather than increment.

- IX. Subsequently, upon no formal date of handover, the complainant inquired from the respondent about tentative date of handover and also got in touch to discuss that in case they cannot get a brand that suits her requirements, she is willing to open her own retail store in her unit. However, the respondent started forcing her to sign the leasing agreement with 'Pantaloons'. This was not acceptable to the complainant and she refused to give in to the undue pressure exerted upon her by the respondent, as is evident from subsequent e-mail dated 24.04.2023 wherein the complainant clearly specified that she wishes to open her own store and cannot be forced to let out her unit to a brand of the respondent's choice. It is pertinent to mention here that the respondent cannot legally subject the complainant to undue pressure in order to force her to lease her unit to a brand of respondent's choice, as is evident from the Agreement dated 14.05.2019 itself.
- X. That thereafter, the complainant kept writing to the respondent as well as visiting the respondent's office in order to seek handover of her unit and execution of conveyance deed in her favour. However, the respondent started raising maintenance charges demands from the complainant. The complainant kept pursuing the respondent by way of e-mails dated 07.06.2023, 17.08.2023, 29.08.2023, 07.06.2024, 22.07.2024 to handover physical possession of unit and execute conveyance deed in her favour and also undertaking to pay the maintenance charges upon key handover while also reiterating

that she cannot be made to pay maintenance charges until actual handover.

- XI. That the complainant time and again highlighted to the Respondent that they were bound vide Clause 10 of the agreement to execute conveyance deed within 3 months of issuance of Occupation Certificate, but the respondent instead of handing over possession, sent a rough Conveyance Deed draft to the complainant that was completely one-sided and bared some unfair clauses that would mean depriving the complainant of her rights with the unit and force her to pay maintenance charges for the time when possession was not offered to her. The Conveyance Deed draft had some arbitrary clauses like the allottee being bound to take an NOC from the respondent in order to keep the unit for self-use and to be bound to give the units on lease to the lessee of respondent's choice, which were completely illegal and thus unacceptable to the complainant.
- XII. That vide e-mail dated 04.09.2024, the respondent shared LOI for brand called 'Yousta' on terms which were unacceptable to the complainant while still not offering physical handover of the unit. To this, vide e-mail dated 06.09.2024, the complainant specifically pointed out that she seeks physical handover of her unit and seeks to open her own retail store in her unit.
- XIII. Thereafter, on the complainant's visit to the project site, she was startled to find out that the inner walls of her unit as well as other units on the ground floor were broken to be merged as one unit. The respondent had not sought any permission from her to make such alteration to her unit. Accordingly, vide e-mail dated 27.09.2024, the complainant requested the respondent to

reconstruct the inner walls and partitions of her unit and restore it to earlier position and handover physical possession. However, instead of handing over possession, the respondent vide e-mails dated 30.09.2024 and 09.10.2024 again exerted undue pressure upon the complainant to pay CAM charges and to sign NOC for leasing arrangement.

XIV. That even after a lapse of more than 7.5 years from the date of booking, the complainant has been left empty handed, under financial distress as the respondent has failed in handing over possession of the unit booked by the complainant, thereby duping the complainant of her hard earned money and causing her great mental trauma. Rather, the respondent is trying every means to dupe the complainant of her unit by forcing her to execute leasing arrangement with a brand of the respondent's choice on their terms and be bound to give an NOC to the respondent by executing a one-sided conveyance deed.

C. Relief sought by the complainant

4. The complainant has sought following relief(s).

- i. Direct the respondent to award delayed possession charges upon the principal amount paid from the due date of possession, i.e. 14.05.2023 till date of actual physical handover in accordance with Section 18 of RERA Act, 2016.
- ii. Direct the respondent to refund the excess amount taken on account of reduction in carpet area from 271 sq. ft. to 256.59 sq. ft.
- iii. Direct the respondent to construct inner walls and to restore complainant's unit to the original state on immediate basis.

- iv. Direct the respondent to handover physical possession of complete unit to the complainant in accordance with the specifications laid down in the Builder buyer agreement on immediate basis.
 - v. Direct the respondent to not charge unreasonable charges like labour cess, external electrification charges.
 - vi. Direct the respondent to not force the complainant to enter into leasing arrangement with a brand of respondent's choice or to seek an NOC for starting her own store.
 - vii. Direct the respondent to execute Conveyance deed in favour of complainant without any unfair clauses.
 - viii. Direct the respondent to not levy any holding charges from the complainant.
 - ix. Direct the respondent to not levy any maintenance charges from the complainant till date of actual handover.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.
- D. Reply by the respondent**
6. The respondent has contested the complaint on the following grounds:-
- I. That the complainant had approached the respondent expressing an interest in the purchase of a commercial unit in the project known as "Elan Miracle", situated in Sector -84, Gurugram.

- II. That after being fully satisfied with all aspects of the unit/project and payment plans offered by the respondent, the complainant made an application dated 20.11.2017 for booking a unit in the said project. The complainant had booked the unit after making independent enquiries and fully satisfying herself regarding the viability and suitability of the aforesaid project as per her needs and had opted for a "Special Fixed Return Payment Plan".
- III. Thereafter, the complainant was allotted a retail/commercial unit tentatively admeasuring 541 sq. ft. bearing unit no. G-142 by the respondent, subject, *inter alia*, to increase or decrease on basis of variation in calculation of actual super area of the premises which was to be determined at the time of offer of possession.
- IV. That the respondent issued letter dated 14.05.2018 setting out the terms and conditions for payment of fixed amount, whereby the respondent agreed to pay to the complainant a fixed amount of Rs.29,079/- per month in accordance with the terms and conditions set out therein. It was clarified in the said letter that offer of possession shall not be dependent upon grant of completion certificate and/or occupation certificate and that the respondent shall stand discharged of its liabilities after offer of possession.
- V. From a perusal of the statement of account, it is evident that a fixed amount of Rs.16,97,892/- inclusive of taxes, has been paid to the complainant for the period from May 2018 till June 2021 in accordance with the letter dated 14.05.2018. Therefore, now the complainant cannot seek the benefit beyond the agreed contractual period as agreed in letter dated 14.05.2018. The monetary benefit extended to and paid to the complainant is on account of a

contractual understanding and arrangement which are beyond the terms of the Application Form and Buyer's Agreement.

- VI. That the Buyer's Agreement containing detailed terms and conditions of allotment were handed over to the complainant for execution on 16.11.2018.
- VII. That by letter dated 04.12.2018, the complainant was reminded to come forward for execution and registration of the buyer's agreement and called upon to pay the requisite charges amounting to Rs.8,279/-.
- VIII. That the buyer's agreement was executed by the parties on 14.05.2019. It is pertinent to mention herein that the buyer's agreement was willingly and voluntarily executed by the complainant after duly understanding and accepting the terms and conditions thereof which are binding upon the complainant with full force and effect.
- IX. That vide letter dated 19.06.2021, the complainant was informed that the respondent had applied for the Occupation certificate in respect of the project on 09.06.2021. The complainant was informed that she would no longer be entitled to any fixed amount/delay penalty/down payment rebate (if applicable), with effect from date of application for the Occupation Certificate, which was in consonance with the agreed contractual understanding as set out in letter dated 14.05.2018. It is pertinent to mention herein that the complainant did not raise any objection to the said letter as well as cessation of fixed amount with effect from date of application for the occupation certificate.
- X. That vide offer of possession letter dated 07.09.2021, the respondent offered possession of the unit to the complainant for fit-outs and

settlement of dues. The complainant was informed that there was an increase in the super area of the unit from 541 sq.ft. to 547 sq.ft. Consequently, the payments to be made by the complainant stood revised due to the increase in super area. It is pertinent to mention that the respondent has offered possession of the units in the project for fit outs at their end so that as and when the Occupation certificate was issued by the Town and Country Planning Department, Haryana, the commercial operations from the units could be commenced without there being any loss of time. Therefore, keeping in view the interest of all the allottees in mind, the respondent issued offer of possession for fit outs to all the eligible allottees in the complex including the complainant.

- XI. That the complainant had approached the respondent and requested to locate a suitable lessee for the unit in question. The respondent drew the attention of the complainant to Clause 49 of the buyer's agreement in terms of which after the date of offer of possession, at the request of the allottee, the respondent had the discretion to lease out the unit, on best effort basis only. Although under no obligation to do so, as a gesture of goodwill, the respondent identified several prospective lessees who were interested in obtaining on lease of larger areas which included other units also, but the terms of the proposed leases including the lease rental amount was not acceptable to the complainant. The same is also evident from the email communications collectively annexed as Annexure -P/6 by the complainant herself which clearly establishes the conduct of the complainant in repeatedly not agreeing to the various offers of lease including but not limited to various reputed brands as proposed and offered to the complainant. The complainant always kept on declining

the offers of lease and consequently, the unit was separated physically so as to suit to the convenience of the complainant.

- XII. That eventually, the respondent, by email dated 27.09.2024 requested the complainant to come forward for registration of the conveyance deed after clearing outstanding CAM charges and completing all other formalities. The complainant was duly intimated and well informed regarding the complete process of handover, obtaining stamp duty and the registration of the conveyance deed and also the contact details of the concerned person in this regard was shared with the complainant. The complainant was further informed that as and when the complainant had a lease offer for her unit, the complainant should inform the respondent regarding the nature of business/brand and seek the prior written approval/NOC from the respondent. The complainant was further informed that the usage of the unit shall be strictly in compliance with the applicable norms/layout approved for the unit.
- XIII. That the complainant is liable to pay CAM charges from the date of offer of possession for fit outs in accordance with clause 7.2 of the buyer's agreement. However, as a gesture of goodwill, the respondent has only demanded CAM charges w.e.f 15.06.2023.
- XIV. That by letter dated 22.03.2023, the complainant was informed about receipt of the occupation certificate from the DTCP. The complainant was informed that as a gesture of goodwill, the respondent had decided not to charge any common area maintenance charges for a three month period commencing from the date of grant of the occupation certificate i.e. 15.03.2023 till 15.06.2023.
- XV. That the respondent had been calling upon the complainant to clear her outstanding dues, complete the requisite formalities/documentation and

take possession. However, the complainant has been delaying the matter for reasons best known to herself and has instead proceeded to file the present false and frivolous complaint.

- XVI. That in terms of Clause 7 of the Buyer's Agreement dated 14.05.2019, possession of the unit was agreed to be offered to the complainant within 48 months from the date of execution of the Buyer's Agreement, with grace period of 12 months and subject to force majeure conditions and events beyond the power and control of the respondent. The respondent has duly offered possession of the unit, complete in all respects in accordance with the Buyer's Agreement, well ahead of the time lines for delivery of possession as set out therein. Hence there is no delay whatsoever on the part of the respondent in offering possession of the unit to the complainant.

E. Jurisdiction of the authority

7. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

10. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainant:

F.I. Direct the respondent to award delayed possession charges upon the principal amount paid from the due date of possession, i.e. 14.05.2023 till date of actual physical handover in accordance with Section 18 of RERA Act, 2016.

11. In the present case, the complainant booked a unit in the project "Elan Miracle" located at Village Hayatpur, Sector-84, Gurugram, Haryana, being developed by the respondent. The complainant was allotted a commercial unit bearing no. G-142, on Ground Floor, admeasuring carpet area of 271 sq.ft. and super area of 541 sq.ft., vide allotment letter dated 21.11.2017. Thereafter, a Builder Buyer Agreement was executed between the complainant and the respondent on 14.05.2019.
12. **Due Date of possession:** As per clause 7.1 of the Builder Buyer Agreement dated 14.05.2019, the respondent undertook to handover possession of the unit to the complainant within 48 months from the

date of execution of the Agreement, with an extension of twelve months due to Force Majeure conditions. The grace period of 12 months being unqualified, is granted to the respondent. Thus, the due date of possession, including the grace period of 12 months comes out to be 14.05.2024.

13. The complainant is seeking delayed possession charges from the respondent from the due date of possession 14.05.2023 till the actual handing over of possession. The Authority is of the view that the due date of possession as above mentioned was 14.05.2024 and the respondent ^{has} ~~have~~ obtained the Occupation certificate from the concerned authorities on 15.03.2023, which is much before the due date of possession. Since, there is no delay whatsoever on the part of the respondent in completion of the project, the relief of the complainant seeking delayed possession charge is not maintainable and thus, declined.

F.II. Direct the respondent to refund the excess amount taken on account of reduction in carpet area from 271 sq. ft. to 256.59 sq. ft.

14. The complainant states that the area of the said unit was reduced from 271 sq. ft. to 256.59 sq. ft. vide offer of possession for fit-out dated 07.09.2021, without giving any prior intimation to, or by taking any written consent from the allottee. The respondent in its defence submitted that increase in super area was duly agreed by the complainant at the time of booking/agreement and the same was incorporated in the buyer agreement. As per clause 31, provides with regard to alteration/modification resulting in more than $\pm 20\%$ change in the super area of the said unit or material change in the specifications of the said unit any time prior to and upon the grant of

occupation certificate. The Company/Confirming Party shall intimate to the Allottee in writing the changes thereof. Relevant clauses of the agreement is reproduced hereunder:

31. ALTERATION/MODIFICATION

In case of any alteration / modifications resulting in change in the Super Area of the Said Unit any time prior to and up on the grant of occupation certificate is $\pm 20\%$, the Developer shall intimate in writing to the Allottee(s) the changes thereof and the resultant change, if any, in the Total Consideration of the Said Unit to be paid by the Allottee(s) and the Allottee(s) agrees to deliver to the Developer written consent or objections to the changes within thirty (30) days from the date of dispatch by the Developer. In case the Allottee (s) does not send his written consent, the Allottee(s) shall be deemed to have given unconditional consent to all such alterations/modifications and for payments, if any, to be paid in consequence thereof. If the Allottee(s) objects in writing indicating his non-consent/objections to such alterations/modifications then in such case alone the Developer may at its sole discretion decide to cancel this Agreement without further notice and refund the money received from the Allottee(s) (less earnest money & non-refundable amounts) within ninety (90) days from the date of receipt of funds by the Developer from resale of the said unit. Upon the decision of the Developer to cancel the Said Unit, the Developer shall be discharged from all its obligations and liabilities under this Agreement and the Allottee(s) shall have no right, interest or claim of any nature whatsoever on the Said Unit and the Parking Space(s), if allotted. Should there be any addition of a Floor or part thereof in the Unit, consequent to the provisions of the Clause-18 of this BBA, then the Actual Area and consequently the Super Area of the said Unit shall stand increased accordingly and the Allottee hereby gives his unconditional acceptance to the same.

15. Considering the aforementioned facts, the Authority is of the view that the respondent has reduced the carpet area of the unit from 271 sq. ft. to 256.59 sq. ft., as reflected in the offer of possession for fit-out dated 07.09.2021, without furnishing any justification or issuing prior intimation to the complainant. The complainant has accordingly sought a refund or adjustment of the amount corresponding to the reduction in the super area of the said unit.
16. Considering the above, the Authority directs the respondent/promoter to refund or adjust the amount, if any, arising due to the reduction in the super area, within a period of 30 days from the date of this order.

F.III. Direct the respondent to construct inner walls and to restore complainant's unit to the original state on immediate basis.

17. The complainant has submitted that, vide email dated 23.08.2022, the respondent issued a Letter of Intent (LOI), proposing a leasing arrangement with the brand "Pantaloons." However, the complainant did not accept the pricing and other terms and conditions proposed and, through email dated 24.08.2022, expressly declined the offer and requested a more suitable proposal. Subsequently, by email dated 24.04.2023, the complainant unambiguously conveyed her decision to open her own store in the subject unit and expressed her unwillingness to lease the unit to any brand of the respondent's choice. Despite repeated requests, possession of the unit has not been handed over to the complainant.
18. Thereafter, on 04.09.2024, the respondent shared another LOI proposing a lease arrangement with the brand "Yousta." The complainant, vide email dated 06.09.2024, reiterated her refusal to lease the unit, reaffirming her intent to establish her own retail outlet therein. Upon visiting the project site, the complainant discovered that the internal walls of her unit, as well as those of adjacent ground floor units, had been demolished in an apparent attempt to merge the spaces into a single unit—an act undertaken without her consent. Accordingly, through email dated 27.09.2024, the complainant requested that the respondent reconstruct the inner partitions of her unit and restore it to its original condition, followed by immediate handover of possession.
19. The Authority observes that at no point did the complainant consent to the terms of any proposed leasing arrangement, nor did she authorize the respondent to alter the internal structure of her unit.

The respondent's unilateral actions in dismantling the inner partitions are found to be arbitrary and without authority.

20. In view of the above, the Authority directs the respondent to restore the complainant's unit to its original condition in accordance with the specifications outlined in the Buyer's Agreement, and to complete such restoration within a period of 30 days from the date of this order.

F.IV Direct the respondent to handover physical possession of complete unit to the complainant in accordance with the specifications laid down in the Builder buyer agreement on immediate basis.

21. It is observed that the respondent obtained the Occupation Certificate from the competent authority on 15.03.2023 and duly intimated the complainant regarding the same on 22.03.2023. The respondent has further submitted that multiple lease offers were extended to the complainant, all of which were declined by her. Consequently, the unit was physically segregated to accommodate the complainant's stated preferences. Thereafter, vide email dated 27.09.2024, the respondent requested the complainant to initiate the process for registration of the Conveyance Deed upon settlement of outstanding Common Area Maintenance (CAM) charges and completion of all other requisite formalities.
22. In view of the above, the respondent is hereby directed to hand over possession of the subject unit to the complainant within a period of 30 days from the date of clearance of all outstanding dues by the complainant.

F.V Direct the respondent to not charge unreasonable charges like labour cess, external electrification charges.

F.VI Direct the respondent to not levy any maintenance charges from the complainant till date of actual handover.

F.VII Direct the respondent to not levy any holding charges from the complainant.

23. The complainant has sought the relief of restraining the respondent from charging the unreasonable charges like labour cess, external electrification charges, maintenance charges and holding charges.

- **Labour cess**

24. As per the Statement of Account dated 07.11.2022 at page no. 102 of the reply, the respondent has charged an amount of Rs.15,732/- on the account of Labour Cess from the complainant. Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.09.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no.962 of 2019 titled as "*Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited*" wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be charged by the respondent.

25. The Authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, no demand of labour cess can be raised upon the complainant and any amount thus raised is completely arbitrary and the complainant cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.

- **External Electrification Charges**

26. The respondent has charged an amount of Rs.67,896/- from the complainant on account of External Electrification

Charges/DHBVN Connection Charges and HUDA Water Connection Charges. It is pertinent to mention that it is the duty of the colonizer to arrange the electric connection from the outside source for electrification of their colony from Haryana Vidhyut Parsaran Nigam/Dakshin Haryana Bijlee Vitran Nigam Limited, Haryana. The installation of electricity distribution infrastructure as per the peak load requirement of the colony shall be the responsibility of the colonizer, for which the colonizer will be required to get the "electric(distribution) services plan/estimates" approved from the agency responsible for installation of "external electrical services" i.e., Haryana Vidhyut Parsaran Nigam/Dakshin Haryana Bijlee Vitran Nigam Limited, Haryana and complete the same before obtaining completion certificate for the colony.

27. As far as external electrification charges are concerned, the respondent cannot collect the same from the allottees even though there is any provision in the builder buyer's agreement to the contrary as has already been laid down in complaint bearing no. 4031 of 2019 titled as "*Varun Gupta Vs. Emaar MGF Land Limited*" decided on 12.08.2021.

• **Holding charges**

28. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any

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holding charges though it would be entitled to interest for the period the payment is delayed.

29. Moreover, the respondent is not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. **3864-3899/2020** decided on 14.12.2020 (supra).

• **Maintenance Charges**

30. In the present complaint, the respondent has obtained the occupation certificate on 15.03.2023 from the competent authority and thereafter, intimated about the same to the complainant on 22.03.2023. The Authority observes that after issuance of occupation certificate, it is presumed that the building is fit for occupation. In multi-storied residential and commercial complexes, various services like security, water supply, operation and maintenance of sewage treatment plants, lighting of common areas, cleaning of common areas, garbage collection, maintenance and operation of lifts and generators etc. are required to be provided. Expenditure is required to be incurred on a consistent basis in providing these services and making available various facilities. It is precisely for this reason that a specific provision is incorporated in the builder buyer's agreement, as per clause 11, that the maintenance charges as may be determined by the respondent would be liable to be paid by the allottee. The respondent has submitted that the respondent has charged the CAM charges w.e.f 15.06.2023 i.e., almost 3 months after receiving the Occupation certificate.

31. Keeping in view the facts above, the Authority deems fit that the respondent is right in demanding maintenance charges. The respondent is directed to provide an updated Statement of Account to the complainant within a period of 30 days of this order and thereafter within the next 30 days of receiving the updated Statement of Accounts, the complainant is directed to clear the outstanding dues.

F.VIII Direct the respondent to not force the complainant to enter into leasing arrangement with a brand of respondent's choice or to seek an NOC for starting her own store.

32. As per clause 49 of the Agreement dated 14.05.2019, the respondent had the exclusive right to lease out the unit till the date of offer of possession only and thereafter, only on the request of the allottee, the promoter was to make best efforts for bringing on board a good brand for leasing the unit. The said clause is reiterated below:

Clause 49

LEASING RIGHTS

The Allottee(s) hereby requests the Developer to Lease out the Unit to a Brand(S) for Retail/F&B/Hospitality etc., Usage/Commercial usage, as the case may be and the Developer agrees to do the same on a best efforts basis only. The Allottee/s further clearly understands and agrees that the Developer would have the exclusive rights to Lease out the said Unit till the date of Offer of Possession only. Developer in turn would ensure on a best efforts basis, attractive Lease terms for the Allottee(s). However the Letter of Intent (LOI)/Term Sheet/MOU and subsequent Lease Deed would be directly executed by the Allottee(s) with the Tenant/Brand if the Lease terms are acceptable to the Allottee(S). It is further expressly agreed by the Allottee(s) that the Developer's right to Lease out the Unit on Allottee(s) behalf shall lapse automatically on Offer of Possession if a binding LOI/Term Sheet/MOU/Lease Deed or any such Agreement is not executed till that time.

The Allottee(s) at his/her discretion however can request the Developer post Offer of Possession also for Leasing out his/her Unit and the Developer may accept/reject the same at it's sole discretion.

[Emphasis supplied]

33. In view of the aforesaid clause, the Authority is of the considered opinion that the respondent cannot compel the complainant to execute a Lease Deed with any brand of the respondent's choice. Such an act would be beyond the scope of the contractual terms agreed upon between the parties.
34. With regard to the requirement of obtaining a No Objection Certificate (NOC) from the respondent in the event the complainant intends to operate her own store in the unit, the Authority finds that there is no such stipulation in the Buyer's Agreement. Accordingly, there exists no contractual basis for imposing such a condition, and the respondent is hereby directed to refrain from insisting upon the same.

F.IX Direct the respondent to execute Conveyance deed in favour of complainant without any unfair clauses.

35. The respondent is directed to execute Conveyance Deed in favour of the respondent within 30 days after handing over possession of the unit to the complainant.

G. Directions of the authority

36. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- The respondent is directed to refund/adjust the amount in lieu of decrease in super area if any, within a period of 30 days from the date of this order.
 - The respondent is directed to restore the unit back in its original form as per the specifications of the Buyer's Agreement, within a period of 30 days of this order.

- iii. The respondent is directed to provide an updated Statement of Account to the complainant within a period of 30 days of this order and thereafter within the next 30 days of receiving the updated Statement of Accounts, the complainant is directed to clear the outstanding dues.
 - iv. The respondent is directed to handover possession of the unit to the complainant within 30 days of the complainant's clearing the outstanding dues.
 - v. The respondent is directed not to force the complainant entering into any leasing arrangement of the respondent's choice and also not force the complainant into obtaining NOC from respondent before operating any store of her choice.
 - vi. The respondent is directed to execute Conveyance Deed in favour of the respondent within 30 days after handing over possession of the unit to the complainant.
 - vii. The respondent shall not charge anything from the complainant which is not the part of the agreement of sale.
37. Complaint stands disposed of.
38. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.08.2025